Judge: Hon. Marc L. Barreca
Chapter: Chapter 7
Hearing Date: February 17, 2012
Hearing Time: 9:30 a.m.

UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re: ADAM GROSSMAN , Debtor.	Case No. 10-19817 **TRUSTEE'S SUR- REPLY TO DEBTOR'S REPLY TO TRUSTEE'S RESPONSE TO DEBTOR'S MOTION FOR ORDER THAT PROCEEDING IS ONE UNDER STOCKBROKER LIQUIDATION SUBCHAPTER III**

The Debtor's Reply to Trustee's Response to Motion for Order That Proceeding is a Stockbroker Liquidation Subchapter III ("Debtor's Reply") states that he is aware "that the court has taken a dim view of the debtor's past activities". The Trustee assumes that this view is going to get much dimmer in light of the Debtor's filings yesterday as we can now add altering documents and lying to this Court to the list of Adam Grossman's misdeeds.

The trustee will not consent to a continuance of the Debtor's Stockbroker Motion. The Debtor did not meet his burden of proof in his initial motion. He clearly does not meet his burden in his Reply Motion which has many allegations, but no documentation or declaration to support the allegations. Further, those allegations can be proven to be false as set forth below.

Late in the afternoon on Tuesday, February 14, 2011 the debtor filed 16 proofs of claim. Each proof of claim was prepared by Adam Grossman and signed by his attorney, Jeff Wells. Each proof of claim was filed on behalf of another person or entity. Each and every

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proof of claim is filed as a secured proof of claim, but for the majority of the claims the security for said obligation is not stated nor is there any supporting documentation attached to the claim. Eleven of the sixteen proof of claims are filed in the amount of $1.00, but nonetheless, filed as secured.

The Debtor filed a proof of claim on behalf of Peter Zieve (claim #20) (See Exhibit “2” to the Declaration of Denice Moewes filed simultaneously herewith). In that proof of claim the debtor (or Mr. Wells, it is unclear since Mr. Wells actually signed the proof of claim on behalf of the debtor), states that Mr. Zieve is owed $156,290.00 for “customer net equity claim based on investments.” There is an exhibit attached in support of the proof of claim, check #2846 from Peter Zieve in the amount of $120,000.00 made payable to Terrington Davies Tanager Fund. This proof of claim is to support the allegations that Zieve invested $120,000.00 into Terrington Davies Tanager Fund.

Check #2846 has been altered and the statement that the $120,000 from Peter Zieve was an investment in Terrington Davies Tanager Fund is demonstrably false.

Peter Zieve filed his own proof of claim on December 6, 2011 (claim #14) (Moewes Declaration, Exhibit “1”). Attached to that proof of claim is the same check, number 2846, in the amount of $120,000.00. The “for” line on that check contains the following hand-written notation: “90 day loan FBO Adam Grossman”. Mr. Zieve also attaches a typed letter dated December 2, 2011 to his proof of claim which states, in part:

> In May 2010 Adam R. Grossman asked Peter Zieve to loan him $120,000 to purchase a property. Mr. Zieve agreed, and since Mr. Grossman represented that time was of the essence and that a personal check from Mr. Zieve would take several days to clear through Adam’s personal account, asked him to write the check to Terrington Davies Tanager Funds, which would clear faster and provide Mr. Grossman with the funds needed to complete the purchase in a timely manner.
>
> Mr. Zieve wrote a personal check from his personal account to “Terrington Davies Tanager Fund” and wrote in the memo area “90 day loan FBO Adam

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> Grossman" with the intention that the money would be available directly to Mr. Grossman for the real estate purchase (see attached copy).

A copy of the check Mr. Zieve attached to his proof of claim and a copy of the check Grossman/Wells attached to their proof of claim are attached as Exhibit "1A "to the Moewes Declaration.

Clearly, the statement in the Wells filed proof of claim that Mr. Zieve has a customer net equity claim based on investments is false. Mr. Zieve has a claim against solely Adam Grossman based on his personal loan to Mr. Grossman.

The debtor then uses the false claim he filed on behalf of Mr. Zieve (#20) to support his statement in the Debtor's Reply that "[s]pecifically the following investors invested in the Terrington Davies Tanager Fund, L.P., Peter Zieve and Lyman Opie. "

Peter Zieve did not invest in Terrington Davies Tanager Fund and the statement in the Debtor's Reply that Peter Zieve was an investor in Terrington Davies Tanager Fund is a false and misleading statement made to this Court.

And shockingly enough, neither did Lyman Opie. Mr. Opie, through his counsel Hugh McCullough at Davis Wright Tremaine, also filed a proof of claim, (claim #16) on February 13, 2012 (Moewes Declaration, Exhibit "3"). In that proof of claim Mr. Opie states (page 4):

> Mr. Lyman Opie loaned an aggregate principal amount of $205,000 to Mr. Grossman. Mr. Opie made a total of four disbursements to Mr. Grossman:
>
> - $15,000 on October 6, 2009 (disbursement made by check)
> - $35,000 on November 13, 2009 (disbursement made by wire transfer)
> - $135,000 on May 25, 2010 (disbursement made by wire transfer)
> - $20,000 on October 13, 2010 (disbursement made by check)1
>
> The first three disbursements were made to Terrington Davies Capital, which is a company owned or controlled by Mr. Grossman. The last disbursement was made to "Tsai Law Firm," who has represented Mr. Grossman in connection with his dissolution proceeding. Attached to this proof of claim are copies of wire transfer receipts and checks showing those disbursements.

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Mr. Opie also attached the promissory notes to evidence said loans (Moewes Declaration, Exhibit 3, pages 16-20). The promissory notes list a sole borrower, Adam R. Grossman, not Terrington Davies Capital Management. As explained by Mr. Opie, he made the checks payable to Terrington Davies Capital but they were for the benefit of Adam Grossman. He asserts no claim against Terrington Davies Capital in his proof of claim.

The proof of claim filed by Lyman Opie evidences that the statement in the Debtor's Reply that Lyman Opie was an investor in Terrington Davies Capital Management is a false and misleading representation to this Court.

The Debtor's Reply also states that "[t]he monies invested in Terrington Davies Tanager Fund, LLP were used to buy the Glennview Drive property." Per usual, there is no documentation to support this claim. However, in the Declaration of Adam Grossman Re: Supplemental Discovery Responses filed in King County Superior Court on or about June 8, 2010 ("Grossman Declaration") he states: [t]he only tangible asset held by Terrington Davies, LLC is the Charles Schwab account in the name of Terrington Davies, LLC. Moewes Declaration, Exhibit "4" page 6. While it is possible that the Zieve and Opie personal loans to the debtor were used to buy the Glennview Property, it was clearly not money that was invested in Terrington Davies Tanager Fund, but money loaned to Adam Grossman individually.

Similarly, the Debtor contends that Mr. Dellas was an investor in the Ptarmigan Real Estate Fund, LLC, and further states that the Ptarmigan Real Estate Fund, LLC provided the funds for the acquisition of the Montcrest Property. In the Grossman Declaration, he stated the following about the Ptarmigan Real Estate Fund, and the Montcrest Property:

> No one other than Adam has invested any money in the Ptarmigan Real Estate Fund. The only members of the Ptarmigan Real Estate Fund are Adam and Jill and Terrington Davies Capital Management LLC (TDCM LLC), and Adam is the only member of TDCM LLC., Using money redeemed from the Tanager Fund, Adam has purchase [sic] one house in the name of the Ptarmigan Fund.

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> Because the parties hold a 100% beneficial interest in the Ptarmigan Fund, we can disregard the business formalities and the [sic] treat the house owned by Ptarmigan Fund as a community asset for purposes of this divorce. There is no one to object if Adam decides to close the entities related to the Ptarmigan Fund.
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> At page 7
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> The house purchased through the Ptarmigan fund is located at 868 Montcrest Dr., Redding, California. To complicate matters further, title is held in the name of the "868 Montcrest Dr. Family Trust." The Ptarmigan Fund is the beneficiary of the trust, which means the parties hold 100% of the beneficial interest in this trust. There are no other assets of any kind held in the name of this trust. There should be no issues regarding the trust at mediation because, as with the Ptarmigan Fund LLC and TDCM LLC, we can disregard these corporate forms and treat the house as community property for purposes of this divorce.
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> At page 7-8.

Further examples of the duplicitousness of the debtor in the Debtor's Reply could be provided but will not, since this is a sur-reply.

The apparent altering of documents, and misrepresentations to this Court only further buttress the trustee's contention in the Trustee's Response to Debtor's Motion for Order that Proceeding is a Stockbroker Liquidation that this debtor is abusing the bankruptcy process and as such cannot convert this case.

What To Do About the Apparent Alterations and False Representations to this Court?

The Trustee believes that the Court should treat this submission by the debtor and his counsel with the utmost gravity. This is not a case of a pleading or a declaration shading the truth at the margins about judgmental facts. This is a deliberate falsification of a piece of evidence, submitted to the Court by an officer of the Court on behalf of his client, in an attempt to persuade the Court to support the debtor's position that Peter Zieve was an investor in Ptarmigan Fund. The response filed by the debtor and signed by Mr. Wells makes it very clear why this evidence was tampered with. In fact, the actual evidence shows just exactly the opposite – that the transaction between Zieve and the debtor was intended by Zieve to be a

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loan to Adam Grossman, and that the payment to Ptarmigan was simply a convenience to allow Grossman to access the funds more quickly.

These submissions constitute a fraud on the Court – they are false statements submitted to the Court by an officer of the Court and should be dealt with as such. . Hazel-Atlas Glass Co., v. Hartford Empire Co., 322 U.S. 238, 245-46, 250, 64 S.Ct 997, 1001, 1003, 88 L.Ed. 1250 (1944)((deliberately planned scheme to present fraudulent evidence constitutes fraud upon the court) , *overruled on other grounds,* Standard Oil Co. of Cal. v. United States, 429 U.S. 17, 97 S.Ct. 31, 50 L.Ed.2d 21 (1976),

While the Court may wish to utilize the provisions of BR 9011, and Section 707(b)(5)(A) the Court also has the inherent power to fashion remedies beyond the scope of BR 9011. In Chambers v. NACSO, Inc., 501 U.S. 32, 45-46, 111 S.Ct. 2123 (1991), the Supreme Court recognized the inherent power of courts to impose appropriate sanctions where conduct disrupts the judicial process. This inherent power resides in the bankruptcy court. In re Rainbow Magazine, Inc., 77 F.3d 278 (9th Cir. 1996). The Ninth Circuit has held that sanctions are available under the court's inherent power if "preceded by a finding of bad faith, or conduct tantamount to bad faith," such as recklessness "combined with an additional factor such as frivolousness, harassment, or an improper purpose." *See* Fink v. Gomez, 239 F.3d 989, 994 (9th Cir. 2001); *see also* Gomez v. Vernon, 255 F.3d 1118, 1134 (9th Cir. 2001).

Dated this 15th day of February, 2012.

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